EHO CASE SUMMARIES FOR
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Pollution Control Hearings Board

Walt Cox v. Ecology
PCHB No. 08-077
Order on Summary Judgment (February 26, 2009)

The Appellant challenged an order by Ecology requiring him to apply for coverage under the Construction Stormwater General Permit (CSGP) for a construction site in Thurston County that would disturb over one acre of land. The Appellant argued that the vested rights doctrine of RCW 58.17.033 shielded him from the requirement to obtain coverage under the permit, because his proposed subdivision and plat was filed in 2004, before the one-acre threshold requirements of the 2005 CSGP went into effect.

The Board held that the requirement to obtain coverage under the CSGP is not an applicable zoning or other land use ordinance subject to the vested rights doctrine. The Board concluded that permit coverage was necessary to conduct development at the site, after local approval of the subdivision, noting that the CSGP regulates the manner in which water quality impacts related to construction at a site are managed, but does not limit the use of land, nor does it exert a "restraining or directing influence" over land use.

The Board also rejected the Appellant's claim that equitable estoppel foreclosed Ecology from requiring Mr. Cox to obtain permit coverage. Appellant's argument was based on the undisputed fact that Ecology's permit terms changed from the time Mr. Cox first sought subdivision approval in 2004, and the time he moved forward with construction in 2008. However, Appellant's conclusory allegations of injury and injustice, as well as the difficult legal standard that must be met to apply equitable estoppel against the government, resulted in the Board rejecting this argument.

Preserve Our Islands v. Ecology and Northwest Aggregates
PCHB No. 08-092
Order Granting Summary Judgment and Dismissal (February 18, 2009)

Appellant, Preserve Our Islands (POI), appealed a letter and email from Ecology in which Ecology refused to modify a §401 Water Quality Certification and coverage under the Sand and Gravel General Permit previously issued to Northwest Aggregates for a sand and gravel mining operation and barge loading facility on Maury Island. Ecology had issued both the §401 Certification and coverage under the general permit several years before the current appeal by POI, and those decisions had not been appealed at that time.

The Board granted summary judgment to Ecology and Northwest Aggregates on the basis that it lacked jurisdiction to hear the case because Ecology's decision not to modify or re-open a certificate or permit was not the type of decision the Legislature has authorized the PCHB to review, or alternatively, that the appeal was not timely filed.

The Board held that under the Board's authorizing statute, RCW 43.21B.110, it lacked jurisdiction to hear a challenge to Ecology's failure or unwillingness to exercise its discretion not to modify/re-open an approval, and that the Appellant's remedy lay in Superior Court under the Administrative Procedures Act. The Board also held that even if it were to conclude it had jurisdiction over Ecology's refusal to reopen and modify the §401 Certification and general permit coverage, POI had not timely filed the appeal. Ecology and POI had engaged in a months-long dialogue over the request to modify the §401 Certification and permit coverage. Ecology had consistently expressed its refusal to take the action sought by POI. In a June, 2008 letter, the agency director expressly refused to grant the relief sought by POI, yet the organization did not appeal Ecology's position (or refusal to act) until September, 2008.

Burton Water Co. v. Ecology, Misty Isle Farms
PHCB No. 07-100
Findings of Fact, Conclusions of Law, and Order (February 3, 2009)
See also Order on Summary Judgment (March 3, 2008)

Burton Water Company appealed the approval of Misty Isle Farms' water right change application, claiming that the increased irrigation of Misty Isle Farms' fields would impair water quality in the aquifer Burton Water Company uses to serve its residential water customers.

Ecology had granted conditional approval in 2002 to change the place of use to include irrigation of additional areas on a field adjacent to a shallow aquifer wellfield site used by the Burton Water Company. The conditional approval required Misty Isle Farms to engage in a five-year monitoring program in an effort to determine whether irrigation was causing or contributing to elevated nitrates in the aquifer. Misty Isle Farms also incorporated a number of best management practices into its use of the field in controversy including applying reduced rates of fertilizer and limiting irrigation rates.

At the end of the five year period, Ecology reviewed the report prepared by Misty Isle Farms' consultant and concluded that irrigation was not causing or contributing to nitrate contamination of the aquifer because the application rate was not exceeding the soil's ability to absorb the water. Burton Water's appeal challenged both the adequacy of the original monitoring program, the validity of its results, and the final approval of the change application.

On summary judgment, the Board excluded as untimely any challenges to the validity of the monitoring and compliance program established in Ecology's 2002 decision and limited the scope of the appeal to issues raised by Ecology's 2007 decision. It held over for hearing the factual dispute about whether Burton Water Company's water rights would be impaired by the application of irrigation water on Misty Isle's land.

After a hearing on the merits, the Board held that where changing the place of use of a water right does not preclude another water right holder's ability to beneficially use the aquifer, Ecology's approval of the change is not unlawful. After considering the parties' competing theories about the sources of nitrates in the aquifer, the Board found the weight of the scientific evidence supported Ecology's determination that decaying woody debris in the soil was the primary cause of elevated nitrates, rather than irrigation.

The decision includes a discussion of the party's expert witnesses' differing interpretations of the monitoring data, including different explanations of how nitrates may move underground. The Board also concluded that Burton Water had not been prevented from

supplying water of sufficient quality to its customers during the monitoring period, and that the evidence did not support a finding that changing the place of use would impair Burton Water Company's ability to beneficially use the aquifer.

PHASE II Municipal Stormwater General Permit
Puget Soundkeeper Alliance et al. v. Ecology, PCHB 07- 022, 023
Findings of Fact, Conclusions of Law, and Order (February 2, 2009)
See also Order on Summary Judgment (September 29, 2008)

In this appeal, multiple parties challenged the validity of Ecology's 2007 Phase II Municipal Stormwater General Permit (Phase II Permit), a NPDES and state waste discharge permit. The Board's decision in the Phase II case is the last of a series of orders addressing aspects of both the Phase I Municipal Stormwater General Permit and the Phase II Permit.

While larger Phase I jurisdictions had been covered by an earlier round of general permit regulation, this is the first stormwater permit applicable to the smaller Phase II cities, towns, and counties. The Western Washington Phase II Permit includes at least 80 cities and portions of five counties, and the Eastern Washington permit covers 20 cities and portions of eight counties.

As a group, they present a range of financial capabilities and experience in stormwater management, most of which with relatively lesser experience and resources to address stormwater than their Phase I counterparts. The environmental appellants challenged several elements of the permits as inadequate to meet federal or state water quality protection requirements. A coalition of Phase II permittees (the Coalition) also challenged numerous permit conditions as overly burdensome, including that the permit unlawfully required local governments to regulate in a manner that could cause an unconstitutional taking of property or otherwise violate state law.

After a round of summary judgment motions from all parties, the Board granted summary judgment in favor of Ecology on several issues. It concluded that the Coalition's constitutional claims regarding taking of property and substantive due process violations were not ripe for review and were more appropriately addressed in superior court, and it rejected a related issue whereby the Coalition argued the State must indemnify local governments for claims that may arise out of implementation of the Phase II Permit. The Board also rejected the Coalition's claims challenging Ecology's use of the Stormwater Management Manual as improper rulemaking and its claim that Ecology unlawfully failed to consider the economic impact of the Phase II Permit.

The Board denied summary judgment on several issues raised by the environmental appellants, including the validity of the Permit's scope of coverage, and its approach to low impact development (LID), new versus existing development, and monitoring requirements.

After the hearing on the merits of the Phase II Western Washington Permit, the Board concluded that sufficient distinctions exist between Phase I and Phase II permittees, in terms of available resources and experience in administering a municipal stormwater management program, to justify different requirements and different schedules for various requirements between the two Permits, particularly regarding the use of LID. It also rejected challenges to the scope of the Permit's coverage, by upholding the geographic area subject to the Permit, the one-acre regulatory threshold, and the Permit's approach to existing versus new development.

Regarding LID, which had been a major focus of the Phase I decision, the Board concluded the current approach in the Phase II permit (which requires adoption of ordinances or other enforceable mechanisms to *allow* but not *require* LID) is permissible, but required Ecology to define in the Permit further steps to advance LID by the Phase II jurisdictions. The Board concluded that Ecology must modify the permit to require permittees to identify barriers to implementation of LID and identify actions taken to remove those barriers, establish goals regarding the future use of LID, and require other specific actions on reasonable and flexible time frames, both during this permit cycle and in anticipation of future permits.

The concurrence/dissent agreed with the bulk of the majority opinion, but would have ordered Ecology to develop a performance standard for LID, and would not have required Phase II permittees to make additional efforts to implement LID during this permit cycle.

No party appealed the Board's Phase II decisions. Ecology recently released its proposed modifications to the Phase II Permits for public comment and plans to re-issue the modified permits in June, 2009.

Skamania County v. USDA Forest Service and Ecology
PCHB No. 08-074
Order on Summary Judgment (January 14, 2009)

Skamania County challenged the USDA Forest Service's proposal to remove Hemlock Dam along Trout Creek, which would eliminate the reservoir known as Hemlock Lake and restore the pre-dam channel and habitat for threatened Lower Columbia River steelhead. The County brought its challenge to the PCHB in the form of an appeal of the §401 water quality certification Ecology approved for the project, and alleged that Ecology failed to consider the impact removal of the dam would have on the County's existing water rights, including a permit to store water in a reservoir and to withdraw surface water from Trout Creek, which it currently exercises using withdrawal and transmission facilities located at the dam.

The Board granted partial summary judgment to the Forest Service and Ecology, holding that its review of a §401 Certification is limited to whether the certification provides reasonable assurance of that removal of the dam will meet state water quality standards and any other appropriate requirements of state law *that protect water quality*. Finding that the County had failed to demonstrate how the particular water rights statutes identified by Skamania County were connected with protecting water quality, the Board dismissed this issue but held over for hearing any remaining challenges related to water quality concerns.

After the Board issued its summary judgment order, the parties reached a settlement, and the Board dismissed the remainder of the case.

Andrew Noel Construction, Inc. v. Department of Ecology
PCHB 07-150
Findings of Fact, Conclusions of Law, and Order (January 13, 2009)

Appellant challenged a $23,000 civil penalty for multiple violations of the Sand and Gravel General NPDES Permit at the site of Appellant's concrete batch plant. After a hearing on

the merits, the Board concluded that Ecology had proved Noel Construction committed most, but not all, of the violations.

The decision includes a lengthy discussion of the relationship between an agency's use of a penalty matrix in determining the amount of a penalty and the Board's three-part test in reviewing the reasonableness of a civil penalty. In applying the three-part test (the nature of the violation; the prior history of the violator; and the remedial actions taken by the penalized party), the Board considers the information derived from the penalty worksheet together with other relevant evidence. The Board reiterated its previous position that it is not bound by the penalty matrix or gravity criteria employed by an agency, but noted that it is a logical and relevant starting point.

In evaluating the appropriate amount of the penalty in this case, the Board concluded that Ecology was unable to establish that an overflow occurred from the sediment pond, and that, under the circumstances, it was wrong to characterize the pouring of concrete slurry over the bank as an improper disposal of waste material. The Board noted however, that Ecology had exercised considerable restraint in assessing the penalty by clustering numerous violations together, and then only assessing a penalty for a single day's violation despite the lengthy amount of time Noel Construction remained out of compliance. The Board also rejected Appellant's claims that he did not know about the permit requirements, and that he was never informed by one of his employees that Ecology made attempts to bring his operation into compliance. In doing so, the Board relied on its previous decisions holding that an employer is responsible for the actions of its employees. The Board concluded that Ecology properly found that the Appellant was unresponsive in correcting the identified problems. In the end, the Board reduced the penalty by $3,000.

Ecology v. Yakima Health District and Yakima County Public Services, Solid Waste Division
PCHB No. 08-058
Order on Summary Judgment (December 19, 2008)

This case involved the unusual situation of Ecology appealing a solid waste permit issued by the Yakima Health District (Health District) for two new lagoons which were to be built at the Cheyne Municipal Solid Waste Landfill Facility in Zillah. The lagoons are intended to store septage, which is the sludge removed from septic tanks. All parties agreed the case could be resolved on summary judgment because the disagreement concerned which regulatory scheme applied and which entity had legal authority to issue the required permit.

On summary judgment, the Board held that the Yakima Health District's decision to permit the lagoons under a solid waste permit was unlawful because a biosolids permit from Ecology is required for the facility.

The Board determined the Legislature intended that septage, to the maximum extent possible, should be reused as a beneficial commodity under the biosolids regulatory scheme (RCW 70.95J and WAC 173-08), and that septage lagoons are regulated as treatment works treating domestic sewage. The Board noted that while Ecology's biosolids rules provide some flexibility in how septage is managed, the options generally do not involve disposing of the material in a landfill except under very limited circumstances. Biosolids regulations require a person disposing of sewage sludge on a long-term basis in a municipal solid waste landfill to obtain a permit from Ecology. For these reasons, the Board concluded that the solid waste permit issued by the Yakima Health District for disposal of septage was invalid.

Soil Key v. Olympic Region Clean Air Agency
PHCB Nos. 07-120 through 07-136
Mediated Settlement—Agreed Dismissal (December 10, 2008)

Soil Key operated a biosolids composting operation in Tenino, WA which encountered problems with neighbors complaining of odors in the summer of 2007. The Olympic Region Clean Air Agency (ORCAA) brought an action for a Temporary Restraining Order in Thurston County Superior Court, which resulted in an order restricting the Soil Key operations. ORCAA also issued Soil Key a series of penalties and an enforcement order, totaling well over $150,000, and Soil Key appealed these actions to the PCHB.

In an effort to avoid the time and costs associated with further litigation, the parties utilized the board's mediation services. Following a full day mediation session, the parties were able to enter into a creative and comprehensive settlement. The settlement provided for the submission of a plan which would result in complete closure of the facility by December 31, 2009.

The settlement also included a plan for managing and distributing the remaining compost from the site, and a provision addressing civil penalties. Soil Key agreed to civil penalties in the amount of $189,000, of which $149,000 would be deferred as long as Soil Key completed the closure according to the plan. Based on the settlement and the parties' joint request, the Board dismissed the multiple appeals.

Delta Marine Industries Inc., v. Puget Sound Clean Air Agency
PCHB No. 08-050
Findings of Fact, Conclusions of Law, and Order (December 1, 2008)

PSCAA issued a $4000 penalty to Delta Marine for use of an unpermitted spray gun to apply gel coat to parts at its custom yacht manufacturing warehouse in Seattle. During an annual inspection, PSCAA inspectors noted a strong odor of styrene, and an absence of signage in the finishing warehouses to inform employees of the requirement to use airless spray guns. Delta Marine responded promptly to the violation and in the appeal to the Board did not contest that the violation occurred as alleged by PSCAA. However, Delta Marine challenged the reasonableness of the penalty, asserting that the spray gun in use was highly efficient and resulted in less overall toxic air emissions. The business also noted that it had a good environmental record and that the incident in question had not increased the environmental risk to the public.

The Board upheld the $4000 penalty based on several factors. The requirement to use airless spray guns to apply certain toxic substances was an explicit and long-standing permit condition. There was a recent, substantially similar violation by the business which had resulted in a penalty and appeal to the PCHB. This put Delta Marine on notice of the need to strictly comply with specific permit conditions. Although Delta Marine promptly responded to the notice of violation, the same problems existed with respect the spray gun use that existed a year earlier, including an inadequate operation and maintenance plan, and supervisory control over proper equipment use.

Capital Contracting v. Olympic Region Clean Air Agency
PCHB No. 08-026
Findings of Fact, Conclusions of Law, and Order (November 17, 2008)

The Appellant challenged two separate penalties, in the amount of $2,600 and $325, for causing or allowing a land clearing burn without a person present who could extinguish the fire, and for conducting a land clearing burn without a permit. The Appellant argued that he should not be held responsible for the actions taken by one of his employees without authority.

Appellant also raised concerns about the agency issuing more than one notice of violation for this incident, because the agency could impose a substantially higher penalty amount for a future violation on the basis that the Appellant had previously been cited for multiple violations.

In affirming both penalties, the Board relied on *Wm. Dickson Co. v. PSAPCA*, 81 Wn. App. 403 (1996) in reiterating that Washington Courts have construed the Washington Clean Air Act as a strict liability statute that does not require proof of knowledge of the violation. The Board cited to previous Board decisions where the property owners were held strictly liable for burn violations occurring on their property regardless of their presence or knowledge of the burn. The Board also held that the issuance of two notices of violation under the facts in the case was neither unreasonable nor an abuse of discretion.

Carl C. Fulton v. Department of Ecology
PCHB No. 06-081
Findings of Fact and Conclusions of Law and Order (November 10, 2008)

Mr. Fulton appealed Ecology's decision on his application to change the point of diversion of an adjudicated Touchet River surface water right. Ecology had approved the change request for the stock use portion of the water right but determined the domestic portion of the right was no longer available for change because it had not been put to beneficial use since 1974 when an exempt well had been installed to serve a new house built on the property.

The waters of the Touchet River were the subject of a 1929 adjudication in Columbia County, after which a water right certificate was issued for what became Fulton's property for the purpose of "stock and domestic use only." At the time of the adjudication, the property owners had lived in a house near the river and used the Touchet River water for household purposes. When a new house was built in 1974, the owners installed a well that has served as the sole source of domestic water since that time. Historically, the property around the house was used for dryland farming and raising livestock. Mr. Fulton used the surface water right at issue in the case for seasonally irrigating his lawns, garden, orchard and pastures, as did the previous owner. Since the adjudication in 1929, none of the property owners had sought a change in purpose of use for the surface water right.

The Board affirmed Ecology's approval of the change application and elimination of the domestic portion of the surface water right, citing RCW 90.03.380, which provides that Ecology may not approve a change application where a perfected right has been abandoned or somehow extinguished.

In deciding Mr. Fulton's change request, Ecology had concluded that, because the well became the exclusive source of water for domestic purposes, the domestic use portion of the

surface water right had not been used for at least five consecutive years and was therefore unavailable for change.

Mr. Fulton asserted that his use of water to irrigate around his house constituted domestic use. The Board observed that, unlike the ground water law context, for surface water rights, the term "domestic" use is undefined. This required the Board to give the term its ordinary meaning, considering the setting and time of the adjudication decree. Because the agency had particular expertise in interpreting the Touchet River adjudication decree, the Board gave deference to Ecology's interpretation and application of the term "domestic use."

The Board agreed that the domestic use portion of Mr. Fulton's water right did not convey a right for irrigation around and in the vicinity of the house, but only a right for in-house domestic use, and that use of the water on surrounding lawns, gardens, and pastures were irrigation uses, not domestic uses. Therefore the Board concluded that Ecology was correct in determining that the domestic use portion of the adjudicated water right was no longer available for change. The only use right that survived in Mr. Fulton's adjudicated water right was that portion that had been granted for stock watering.

Klova and Charmaine Beck v. Ecology
PCHB No. 06-072
Findings of Fact, Conclusions of Law, and Order (November 6, 2008)

The Becks challenged Ecology's denial of their request to change the exercise of an irrigation water right from a surface water diversion out of an irrigation ditch to withdrawals of groundwater from a nearby domestic well. The well and the ditch are hydraulically connected to each other. Both are connected to the Walla Walla River, which is closed to further consumptive appropriations. There are chronic shortages of water in this area, particularly during the growing season, and cessation orders directing curtailment of junior water rights have been necessary on several occasions in the recent past.

In making its decision on the Becks' requested change, Ecology utilized models that showed expected response times indicating how soon water would be available at the surface following a halt in pumping at the Becks' well in response to a cessation order.

The Becks appeared *pro se*, and presented no scientific or technical testimony to challenge Ecology's hydrogeologic model predictions.

The Board determined that changing the withdrawals from surface water to groundwater would negatively affect the availability of water in a curtailment situation for the downstream irrigation district, which holds surface water rights senior to the Becks'. The rate and volume of impact on a stream due to groundwater pumping is not equivalent to the effect of direct surface water withdrawals, nor is the recharge benefit of curtailing one or the other the same.

Ecology had analyzed the expected response time in terms of how soon water would be available at the surface after the Becks stopped pumping groundwater, and concluded it would be significantly delayed compared to the response time from curtailing Becks' existing surface water diversions. Ecology's hydrogeologic model predicted the change would result in a delay of days or weeks of the full benefit of curtailment of Beck's water right to the senior right holders compared to the benefit available from curtailing the Beck's existing surface water diversions.

In reaching its decision, the Board relied on *Hubbard v. Ecology*, 86 Wn. App. 119, 124 (1997), which held that the rights of surface water appropriators are superior to those subsequently acquired rights to underground water that is tributary to the source, or that may affect the flow of the surface water. It also relied on *Postema v. PCHB*, 142 Wn.2d 68, 95 (2000), which held that a proposed withdrawal of groundwater from a closed stream in hydraulic continuity must be denied if the withdrawal will impair existing surface water rights.

The Board decided that, because the requested change would create a significant delay in the availability of water to downstream senior water right holders in a curtailment situation, Ecology's denial of the change application was proper under RCW 90.03.380, which allows a change from surface diversion to groundwater withdrawal only if it can be made "without detriment or injury to existing rights."

Shorelines Hearings Board

Taylor Shellfish Farms v. Pierce County
SHB Nos. 06-039, 07-003, and 07-005
Findings of Fact, Conclusions of Law, and Order (January 23, 2009)

Taylor Farms applied for two substantial development permits to conduct an intertidal geoduck farming operation on tidelands on the eastern shore of Case Inlet near Vaughn, Washington. The sites are in an area designated as a rural shoreline environment under the Pierce County Shoreline Master Program (SMP). The County allows aquaculture operations in this area subject to the County's Guidelines for reviewing substantial development permits.

The County approved the permits with conditions, one of which restricted Taylor's days and hours of harvesting to Monday through Friday, 8:30 a.m. to 4:30 p.m. with no harvest permitted on Saturdays, Sundays or state holidays. The condition was imposed in an attempt to minimize conflict between use of intertidal areas for geoduck farming, and surrounding residential uses.

The Board concluded that other conditions on the permits which addressed limits on noise and light were adequate to protect neighboring residents, and that the condition which limited days and hours of operation was overly burdensome to an intertidal geoduck farming operation. Restricting work hours based on daylight and weekdays alone did not recognize the unique influence tidal fluctuations have on geoduck propagation, maintenance, and harvesting. The condition restricting timing and days of operation would have effectively precluded Taylor's access to parts of its geoduck farm for significant periods of time.

The Board struck the condition addressing operation timing, and modified the other conditions to insure that requirements to limit light and noise applied to all stages of the geoduck farming operation. This decision was consistent with, and based on, a prior Board case, *Marnin v. Mason County*, SHB No. 07-021 (2008), in which a similar operating restriction on oyster cultivation and clam farming in subtidal and intertidal waters in Mason County was invalidated.

Todd and Kristi Hayes v. Mason County and David Morris
Steven C. Bright v. Mason County and David Morris
PCHB No. 08-021 & 08-022 (Consolidated)

Findings of Fact, Conclusions of Law, and Order (January 23, 2009)

This case involved an appeal by neighbors opposing Mason County's approval of a joint use dock on Grapeview Point near Treasure Island. At hearing, Petitioners challenged the County's decision, and a subsequent revision to that decision which had authorized a longer dock. They contested the decisions on several grounds, including that the County failed to give proper public notice of the project initially, that the facility was incompatible with its surrounding environment, and that the joint use agreement was not effective to satisfy its intended purposes.

The Board concluded it had no jurisdiction over the original approval because that decision had not been timely appealed, and while there may have been some irregularities in the County's notice procedures, Petitioners had not shown any actual prejudice as a result.

The Board then reversed the County's approval of the revision decision based on its conclusion that the revision was not within the scope and intent of the original approval. It reached this conclusion based on the fact that it exceeded the original square footage by more than ten percent, and it impermissibly increased the adverse impact on the surrounding environment and customary recreational uses of the area in violation of WAC 173-27-100.

The Board also found that the joint use agreement was illusory and did not satisfy the original permit's joint use condition or the County's joint use policy, which had been the basis for allowing the original dock in the first instance.

Forest Practices Appeals Board

Ronald B. Cleveland, et al. v. Department of Natural Resources
FPAB No. 08-002
Order Granting Summary Judgment (December 12, 2008)

The Department of Natural Resources (DNR) issued an enforcement order, along with a notice of conversion activities, to the Appellants who had harvested trees and cleared stumps and young replanted trees to create space for a parking lot and fire lane for purposes of a planned Renaissance Faire.

Pursuant to a 2007 law, DNR is required to send a notice of conversion to a nonforestry use when a landowner harvests without an approved forest practices permit for the purpose of converting the harvested land to a non-forestry use. RCW 76.09.060(3)(b). When a local government receives such a notice, RCW 76.09.460 directs the local government to deny all applications for land use permits relating to nonforestry uses of the land for six years or until all regulatory requirements are satisfied. Because of the notice of conversion issued by DNR, the Appellants' site is now subject to a moratorium on development permits.

In this appeal, Appellants argued that the activities they had undertaken did not require a forest practices permit. They also argued that conducting a temporary renaissance faire was compatible with the growing of timber, and therefore the activities were not for the purposes of converting the land to a use other than forestry.

The Board concluded on summary judgment that DNR was correct in concluding that the activities did require a permit, and that they were conversion activities, and therefore that the notice of conversion activities was appropriately issued. The Board granted summary judgment

to DNR, and the appeal was dismissed. The Board's decision is on appeal to Thurston County Superior Court.